

TENTATIVE RULINGS for CIVIL LAW and MOTION

June 23, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts' Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Anagnostou v. Vasquez**
Case No. CV UD 09-2340

Hearing Date: **June 23, 2010** **Department Fifteen** **9:00 a.m.**

Alysa Meyer and Gillian Sonnad of Legal Services of Northern California's unopposed motion to be relieved as counsel for the defendant is **GRANTED**. (Code Civ. Proc., §§ 284 and 1101, subd. (b); Cal. Rules of Court, rules 3.1362 and 3.252.) This order is not effective until Ms. Meyer and Ms. Sonnad file a proof of service with the Court showing service of a copy of the signed order on their client. (Cal. Rules of Court, rule 3.1362(e).)

TENTATIVE RULING

Case: **Fireside Bank v. Beals**
Case No. CV G 09-2843

Hearing date: **June 23, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiff's unopposed motion for summary judgment is **GRANTED**. (Code Civ. Proc., § 437c, subds. (c) & (p)(1); Undisputed Material Facts 1-11; Declaration of Mejo Turner ¶¶ 1-29, Exhibits 1-6.) Plaintiff met its burden of proving each element of the cause of action for deficiency judgment and the cause of action for common counts and of proving that there are no triable issues as to any material facts, entitling it to judgment.

Plaintiff's request for attorney's fees and costs is **DENIED WITHOUT PREJUDICE**. Reasonable attorney's fees require a court determination upon noticed motion. (Civ. Code, § 1717; Cal. Rules of Court, rule 3.1700 *et seq.* & 8.104.)

Plaintiff is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

TENTATIVE RULING

Case: JPMorgan Chase Bank, N.A. v. Brown
Case No. CV UD 10-1223

Hearing Date: June 23, 2010 **Department Fifteen** **9:00 a.m.**

Plaintiff's unopposed motion for summary judgment is **DENIED WITHOUT PREJUDICE**. It has not been established that a 3-day written notice to quit the property was served on Christopher Brown. (Code Civ. Proc., § 1161a, subd. (b)(3).) The proof of service attached to the Notice to Quit states that on April 30, 2010, registered process server Dennis Barber served Mr. Brown with a document called "3/90 DAY NOTICE TO VACATE." (Exhibit 3 to Wallace Declaration.) This description does not match the name nor the content of page 1 of Exhibit 3 to Mr. Wallace's declaration.

It is noted that the Declaration of Terrance Page Sr. does not contain an original signature. Plaintiff's counsel Ruzicka & Wallace, LLP was informed in a different unlawful detainer action before this Court that a declarant's original signature is required where the declaration is not filed by facsimile. The Court reminds counsel of this requirement.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Ochoa v. Diablo Funding Group, Inc. et al.
Case No. CV CV 09-2398

Hearing Date: June 23, 2010 **Department Fifteen** **9:00 a.m.**

This matter is **CONTINUED** on the Court's own motion to June 25, 2010, at 9:00 a.m. in Department Fifteen so that it may be heard with the demurrer of Tom Sells and Western National Appraisals.

TENTATIVE RULING

Case: Pinewood Court Apartments v. USA Properties Fund, Inc.
Case No. CV CV 08-2988

Hearing Date: June 23, 2010 **Department Fifteen** **9:00 a.m.**

Defendant CJS Plumbing, Inc.'s motion to compel further responses to special interrogatories, set one is **DENIED**. (Code Civ. Proc., §§ 1013, 2030.300, subd. (c); *Sharp v. Union Pacific RR Co.* (1992) 8 Cal.App.4th 357, 360.) Effective service requires strict compliance with Code of Civil Procedure section 1013. (*Id.*) There is no evidence before the Court of a written agreement to accept service by facsimile transmission. (Code Civ. Proc., § 1013.) Thus, service of the further responses to the special interrogatories was ineffective and the date to file the motion to compel was March 15, 2010, per agreement of the parties. (Dec. of Sandeep G. Agarwal, ¶¶ 1-12; Exhibits A-J.) Moreover, even if the motion was timely filed, the Court finds that the responses are adequate and no further responses are required.

Defendant/Cross-Complainant Pacific West Fire Protection Group, Inc.'s request for sanctions is **GRANTED**. CJS Plumbing, Inc. shall pay Pacific West Fire Protection Group, Inc. \$725.00 by July 7, 2010. As Defendant's request for attorney's fees incurred for attendance at the hearing are estimated and prospective, they are not included in the sanctions award.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Zochlinski v. Regents**

Case No. CV PT 07-9

Hearing Date: **June 23, 2010** **Department Fifteen** **9:00 a.m.**

Because of the pending appeals in this matter, this court has no jurisdiction to hear Howard Zochlinski's motion to vacate the judgment and to enter a new judgment. (Code Civ. Proc., § 916, subd. (a).)

This court has jurisdiction to hear Mr. Zochlinski's motion for a new trial. (9 Witkin Procedure (5th ed. 2008) Appeal, § 23, p. 86.) However, under Code of Civil Procedure section 660, this court's authority to rule on such motion expired on June 7, 2010. Instead of waiting for the judge to set the hearing date as contemplated in Code of Civil Procedure section 661, Mr. Zochlinski presented and filed a noticed motion for new trial. Because the new trial motion was not determined within the period provided in Code of Civil Procedure section 660, the motion was effectively denied without further order of the court. (Code Civ. Proc., § 660.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.